

**IN THE HIGH COURT OF FIJI**  
**ACT SUVA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 227 of 2021**

STACTE

vs

JOSATEKI TEMO

**Counsels:**    *Ms. Semisi. K*            -            *for State*  
                         *Mr. Emasi I*                            -            *for Accused*

*Date of Sentence: 16/01/2024*

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**SENTENCE**

1. The accused in this matter, **JOSATEKI TEMO**, was charged with 16 counts of **Rape** against SQ (**Prosecutrix**), within a period of 5 years, since she was 14 years of age until she was 19 years of age without her consent, as below:

**COUNT 1**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of May 2016 and 31<sup>st</sup> day of August 2016 Act Moala, Lau in the Eastern Division, penetrated the vagina of SALOT QALOKIVUYA, with his fingers without her consent.

**COUNT 2**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of May 2016 and 31<sup>st</sup> day of August 2016 Act Moala, Lau in the Eastern Division, penetrated the vagina of SALOTE QALOKIVUYA, with his tongue without her consent.

**COUNT 3**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (a) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of May 2016 and 31<sup>st</sup> day of August 2016 Act Moala, Lau in the Eastern Division, had carnal knowledge of SALOTE QALOKIVUYA, without her consent.

**COUNT 4**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of May 2016 and 31<sup>st</sup> day of August 2016 Act Moala, Lau in the Eastern Division, penetrated the vulva of SALOTE QALOKIVUYA, with his tongue without her consent.

**COUNT 5**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on the same occasion as Count 4 Act Moala in the Eastern Division had carnal knowledge of SALOTE QALOKIVUYA, without her consent.

**COUNT 6**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of April 2017 and 31<sup>st</sup> day of May 2017 Act Moala, Lau in the Eastern Division, penetrated the vulva of SALOTE QALOKIVUYA, with his tongue without her consent.

**COUNT 7**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of May 2016 and 31<sup>st</sup> day of August 2016 Act Moala, Lau in the Eastern Division, had carnal knowledge of SALOTE QALOKIVUYA, without her consent.

**COUNT 8**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of August 2017 and 30<sup>th</sup> day of September 2017 Act Moala, Lau in the Eastern Division, penetrated the vulva of SALOTE QALOKIVUYA, with his tongue without her consent.

**COUNT 9**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on the same occasion as count 8 Act Moala, in the Eastern Division had carnal knowledge of SALOTE QALOKIVUYA, with his tongue without her consent.

**COUNT 10**

***Representative Count***

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of January 2018 and 31<sup>st</sup> day of December 2018 Act Moala, Lau in the Eastern Division, penetrated the vulva of SALOTE QALOKIVUYA, with his tongue without her consent.

**COUNT 11**

***Representative Count***

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on the same occasion as Count 10 Act Moala in the Eastern Division had carnal knowledge of SALOTE QALOKIVUYA, without her consent.

**COUNT 12**

***Representative Count***

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of January 2019 and 31<sup>st</sup> day of December 2019 Act Moala, Lau in the Eastern Division, had carnal knowledge of SALOTE QALOKIVUYA, without her consent.

**COUNT 13**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on an unknown date between the 1<sup>st</sup> day of April 2020 and 30<sup>th</sup> day of April 2020 Act Moala, Lau in the Eastern Division, had carnal knowledge of SALOTE QALOKIVUYA, without her consent.

**COUNT 14**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on the 22<sup>nd</sup> day of December 2020 Act Moala, Lau in the Eastern Division, penetrated the vulva of SALOTE QALOKIVUYA, with his tongue without her consent.

**COUNT 15**

***Statement of Offence***

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

***Particulars of Offence***

**JOSATEKI TEMO**, on the same occasion as count 14 Act Moala, Lau in the Eastern Division, had carnal knowledge of SALOTE QALOKIVUYA, without her consent.

## COUNT 16

### *Statement of Offence*

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

### *Particulars of Offence*

**JOSATEKI TEMO**, on the 7<sup>th</sup> day of January 2021 Act Moala, Lau in the Eastern Division, had carnal knowledge of SALOTE QALOKIVUYA, without her consent.

2. When the above counts were read in Court, you pleaded guilty on your own free will to the above-mentioned counts represented by counsel on 03/10/2023. You understood the consequences of the guilty plea for offences you have committed. This Court was satisfied that your guilty plea was informed and unequivocal and entered freely and voluntarily by you.
3. You agreed to the summary of facts when they were read to you in Court on 01/11/2023. The Summary of Facts read, as below:

### **SUMMARY OF FACTS**

**The Accused: Josateki Temo, 50 years old, itaukei, Farmer and resides At Maloku village, Moala, Lau.**

**The complainant: Salote Qalokivuya (“the complainant), 14 years old At the time the first incident occurred in 2016, (D.O.B: 21/05/02), itaukei, currently a Form 7 student of Yasayasa Moala College and resides Act Maloku village, Moala, Lau.**

**The accused is the uncle of the complainant hence there is a domestic relationship.**

### **Facts of the Case**

- Since the death of the complainant’s mother in 2017, she has been residing with the accused and his wife in Maloku village, Moala, Lau, the complainant alleged that the accused began to sexually abuse her in 2016 when she was 14 years old up until the year 2021.
- The complainant was a class 8 student of Maloku Primary School and residing with the accused and his wife at their home in Maloku village, the complainant recalled that the first incident occurred on an unknown date between May and August whilst the second school term was still in session.
- On this occasion it was nighttime and the accused’s wife and the complainant’s younger sister were asleep in the sitting room, however the complainant was still awake inside the house. The accused arrived home and

upon entering the house was looking for newspaper to roll his cigarette, when the accused noted that the complainant was the only person awake he went and sat beside her and began to fondle her breasts and fondle her vagina with his fingers, later the accused warned her not to tell anyone and because the complainant was afraid he would do something to her if she did not relay the incident to anyone.

#### **Second sexual abuse allegation in 2016 – Bush Area**

- On another occasion in 2016, the accused told the complainant to go with him as he would give her something but when she followed him he led her to a bush and then pulled down her panty and penetrated the complainant's vagina with his tongue for some time and then inserted his erected penis into the complainant's vagina causing the complainant to bleed from her vagina for the first time.
- Despite telling the accused that his actions caused her pain, he told her he was almost finished and continued to penetrate her vagina with his penis. Afterwards the accused told the complainant to stand up and wear her clothes and gave her \$5.00 cash and warned her not to tell anyone, the complainant stated she was afraid that the accused would do something to her hence she did not tell anyone about this second incident.

#### **Third sexual abuse allegation in 2016 – Grandfather's house**

- The complainant stated that the third occasion took place sometime between the month of August and November at her grandfather's house when no one else was at home with her and the accused. The complainant stated that the accused took off her panty and penetrated her vagina with his tongue then inserted his penis into her vagina and moved up and down several times, afterwards the accused gave her \$5.00 and warned her not to tell anyone about this incident.

#### **Fourth sexual abuse allegation in 2017 – Bush area**

- The complainant stated that this incident took place when she had returned home for the first school term holiday between the last week of April and the month of May, the accused took the complainant to an area covered in bushes, kissed her, sucked her breasts, penetrated her vagina with his tongue then inserted his penis into her vagina and moved up and down until he ejaculated. Afterwards the accused wore his pants and gave the complainant \$10 and told her not to tell anyone about this incident.

#### **Fifth sexual abuse allegation in 2017 – Bush area**

- The fifth incident took place when the complainant returned to spend the school term 2 holidays which was between the months of August and the first week of September, the accused took the complainant out again to a bush area that was different to the previous location noted above.

- The accused then forced the complainant to lie down and pulled her pants down, penetrated her vagina with his tongue then inserted his erect penis into her vagina and penetrated her vagina quickly so that no one would catch them. Afterwards the accused wore his pants and gave the complainant \$20 and warned him not to tell anyone about this incident.

#### **Sixth, Seventh, Eighth sexual abuse allegation in 2018 –Bush area**

- The complainant stated that sometime during the school term break throughout the year the accused had penetrated his penis into the complainant’s vagina on three separate occasions. The complainant stated the accused would always penetrate her vagina with his tongue first then insert his penis into her vagina afterwards, she further stated that on all three occasions he took her to the same spot which was a bush area outdoors and then gave her \$10.00.

#### **Ninth, tenth, eleventh sexual abuse allegation in 2019 – Bush area**

- The complainant stated that sometimes during each school term break throughout the year, the accused had penetrated his penis into the complainant’s vagina on three separate occasions. The complainant stated that the accused would on each occasion kiss her mouth, pull down her panty and then insert his penis into her vagina, she further stated that on all three occasions he took her to the same spot which was a bush area outdoors and then gave her \$10 after each occasion and would always tell her to take the lead back to the village and he would follow behind her.

#### **Twelfth sexual abuse allegation in 2020 – Bush near pig pen**

- The complainant stated that during the first term school break during the month of April she was at home when the accused told her to follow him to some bushes nearby a pig pen at the edge of the village. There, the accused kissed the complainant’s mouth and penetrated his penis into her vagina, afterwards he gave her \$10 and told her not to tell anyone.

#### **Thirteenth sexual abuse allegation in 2020 – Bush area**

- On 22<sup>nd</sup> December 2020, the accused took the complainant to the bush where they would normally go to and made her lie down and undressed the complainant, the accused then penetrated her vagina with his tongue and then inserted his penis into her vagina and moved up and down until he ejaculated. Afterwards, the accused gave her \$10 and warned her not to tell anyone in the village.

#### **Fourteenth sexual abuse allegation in 2021 – Bush area near home**

- On 7<sup>th</sup> January 2021, the complainant recalled that it was sometime during the day when the accused called the complainant and indicated to her for them to meet up at a bush nearby; the complainant then met the accused at the same place they would usually go and the accused made her lie down and

started kissing her and pulled her panty down. The Accused then lifted the complainant's legs up and inserted his penis into her vagina and moved up and down until he ejaculated. Afterwards the accused gave the complainant \$10 and warned her not to tell anyone about what he had been doing to her.

#### **Recent complaint Evidence**

- On 7<sup>th</sup> January 2021, Samuela Kataiwai "PW2" was informed by one of his daughters that one of the villagers namely Usabula Gonevakarua "PW3" had seen the complainant and the accused signal to each other to meet somewhere. PW2 then asked the complainant if anything happened and that is when the complainant informed PW2 that the accused had been having sexual intercourse with her since she was in class 8 in 2016 until this year, 2021. PW2 then contacted the village chief who had reported the matter to Police.

4. In comprehending with the gravity of the offence you have committed, this Court is mindful that the maximum punishment for the offence of **Rape** under **Section 207 (1) and (2) (a)** of the **Crimes Act 2009** is Life Imprisonment.
5. The accepted tariffs for the offences you have committed depend on the nature and circumstances under which Rape, and the consequences entailing the commission of the offence to the victim and her family Act large.
6. This Court also recognizes that to address the rapid increase of sexual offences in our community against young children that shatters the fundamental values of our inclusive community, any punishment imposed by Court for this offence should have a reprehensible deterrent effect that could also send a profoundly strong signal to discourage potential wrong doers in our society with a view of safeguarding the younger generation of our country.
7. As per the existing law in Fiji, the sentencing tariff for Rape of a child ranges from 11 to 20 years' imprisonment as held by the **Supreme Court of Fiji** in the case of *Aitcheson v State [2018]*<sup>1</sup>.
8. In assessing the objective seriousness of your offending in this matter, this Court considered the maximum sentence prescribed for the offences, the degree of culpability,

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<sup>1</sup> [\[2018\] FJSC 29](#) (2 November 2018).



the manner in which you committed the offences and the harm caused to the Prosecutrix. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In this matter, you had committed the sexual offences stated in information filed in Court during a period of 5 years on your 14-year-old niece, who was residing with you after the demise of her mother. In this regard, this Courts has a duty to discourage and deter this kind of behavior that belittles the much-valued family fabric of our society and the protection of vulnerable children.

9. The seriousness of such offences was well identified by the **Court of Appel of Fiji** in the case of *Drotini v The State [2006]*<sup>2</sup>, as below:

*“There are few more serious aggravating circumstances than where the rape is committed on a juvenile girl by a family member or someone who is in a position of special trust. The seriousness of the offence is exaggerated by the fact that family loyalties and emotions all too often enable the offender or other family members to prevent a complaint going outside the family. If the child then remains in the family home, the rapist often has the opportunity to repeat the offence and to hope for the same protection from the rest of the family.”*

10. In this background, this Court needs affirm our citizenry that our Courts of Law is compelled to stand as the last bastion, if needed, for the protection of vulnerable children who are exposed to aggressions of their own family members like in this matter. Having considered all these factors, this Court would pick a starting point of 19 years imprisonment against you as the first step in the sentencing process.

11. Considering the circumstances of this case, I intend to refer to the pronouncement of the **Supreme Court of Fiji** in the case of *Ram v State [2015]*<sup>3</sup>, where the Court has mentioned the need to consider how horrific the overall circumstances of the crime were to the victim. In this regard, Court had mentioned the suitability of considering the following circumstances in considering the sentence:

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<sup>2</sup> [2006] FJCA 26

<sup>3</sup> [2015] FJSC 26 (23<sup>rd</sup> October 2015)

“(a) *whether the crime had been planned, or whether it was incidental or opportunistic;*

(b) ***whether there had been a breach of trust;***

(c) *whether committed alone;*

(d) *whether alcohol or drugs had been used to condition the victim;*

(e) ***whether the victim was disabled, mentally or physically, or was especially vulnerable as a child;***

(f) *whether the impact on the victim had been severe, traumatic, or continuing;*

(g) *whether actual violence had been inflicted;*

(h) *whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*

(i) *whether the method of penetration was dangerous or especially abhorrent;*

(j) *whether there had been a forced entry to a residence where the victim was present;*

(k) *whether the incident was sustained over a long period such as several hours;*

(l) *whether the incident had been especially degrading or humiliating;*

(m) *If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if Act start of trial;*

(n) *Time spent in custody on remand.*

(o) *Extent of remorse and an evaluation of its genuineness;*

(p) *If other counts or if serving another sentence, totality of appropriate sentence.”*

12. In aggravation, Prosecution highlights that you had taken advantage of the vulnerability of an innocent victim in this matter, where she was inclined to faithfully follow your instructions. Therefore, you have held a position of trust and authority over the victim in this matter, which you betrayed and exploited her vulnerability by committing these acts of Rape for over a period of 5 years. Considering this very grave consideration, this Court increase your sentence by 2 years.

13. In mitigation, your counsel informs this Court that you have entered an early guilty plea and that you regret your action in reaction to this matter. You have also been supportive to the police during investigations after your arrest. Further, by pleading guilty to the charge you have saved courts time and resources Act a very early stage of the court

proceedings. For all these grounds in mitigation, you should receive a discount in the sentence. In this regard, I give you a reduction of one third in your sentence.

14. The Prosecution also brings to the Attention of this Court that you have been in remand custody for 1 year in relation to this matter, which periods should be deducted from your sentence separately.

15. **JOSATEKI TEMO**, in considering all the factors analyzed above, this Court sentences you to 13 years imprisonment with a non-parole period of 12 years and 6 months under **Section 18 (1) of the Sentencing and Penalties Act of 2009.**

16. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Thushara Kumarage", is written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

**Act Suva**

**This 16<sup>th</sup> day of January 2024**

- cc:*
1. *Director of Public Prosecutions*
  2. *Legal Aid Commission*